CMPMO No. 212 of 2006.

16.5.2007 Present: Mr. Romesh Verma, Advocate, for the petitioner.

Mr. Narender Sharma, Advocate, for respondent No.1.

CMP No. 303 of 2007.

Allowed. There shall an order in terms of the prayer part of the application.

Amended memo of parties has been filed. It is taken on record.

CMPMO No. 212 of 2006.

It is a very peculiar case where an appeal filed by the petitioner stands dismissed for non-prosecution only on the ground that the petitioner had not furnished to the learned appellate Court the particulars of the file to be requisitioned. In the impugned order dated 17th May, 2006 there is a mention of an interlocutory order passed by the Court on 9th January, 2006. This order reads thus:

> "Let the original file appeal, details of which to be provided by the appellant be requisitioned on P.F. for 27.2.2006."

As the matter pending before the learned District Judge, Shimla, was a Civil Appeal under Section 96 of the Code of Civil Procedure against the judgment dated 5th September, 2005 passed by the learned Civil Judge (Senior Division), Shimla, the certified copy of the said impugned judgment was annexed by the petitioner-appellant alongwith the memo of appeal filed by him with the learned District Judge. From the original record I have seen the memo of Appeal as well as the certified copy at page 9 of the file of the Court of learned District Judge. The cause title of the memo of appeal as well as the certified copy of the impugned judgment of the trial Court clearly reveals and describes the fullest particulars of the original case. Where was, therefore, the need for the appellant to provide the particulars of the original file? The learned District Judge fell into an error on 9th January,

2006 itself by issuing direction in the aforesaid terms. It was a duty of the learned appellate Court to have summoned the file of the trial Court by referring to the particulars contained in the cause title of the appeal as well as on the face of the impugned judgment by the learned trial Court.

The impugned order dated 17th May, 2006, therefore, suffers from a great illegality on the very face of the order. It is set aside.

The appeal is revived to its original position. The parties, through their learned Counsel are directed to appear before the learned District Judge, Shimla on 13th June, 2007. The learned District Judge is directed to proceed with the appeal in accordance with law. Record be sent back.

May 16, 2007. **(V.K. Gupta), C.J.**
(rc)